**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
AT MARTINSBURG**

BANK OF CHARLES TOWN,

Plaintiff,

v.

CIVIL ACTION NO. _____________
(Removed from the Circuit Court of Jefferson County, No. 10-C-312)

**ENCOMPASS INSURANCE,
ENCOMPASS INDEMNITY COMPANY,
MICHELLE GROSSMAN,
JOHN WILSON, AND JOHN OR JANE DOE,**

Defendants.

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1441 and 1446, Defendants Encompass Insurance Company (incorrectly identified in Plaintiff's Complaint as Encompass Insurance) and Encompass Indemnity Company hereby give notice of the removal of this action from the Circuit Court of Jefferson County, West Virginia, Civil Action No. 10-C-312, to the United States District Court for the Northern District of West Virginia, and in support hereby, state as follows:

1. Encompass Insurance Company, incorrectly identified in Plaintiff's Complaint as Encompass Insurance, Encompass Indemnity Company, Michelle Grossman and John Willson, incorrectly identified in Plaintiff's Complaint as John Wilson, have been named as Defendants in that subject civil action filed in the Circuit Court of Jefferson County, West Virginia, styled *Bank of Charles Town v. Encompass Insurance, Encompass Indemnity*

Company, Michelle Grossman, John Wilson, and John or Jane Doe, Civil Action No. 10-C-312;

2. Copies of the Summons and Plaintiff's Complaint were served through the Secretary of State upon Encompass Insurance Company, incorrectly identified in Plaintiff's Complaint as Encompass Insurance, Encompass Indemnity Company and Michelle Grossman on September 7, 2010; copies of the Summons and Plaintiff's Complaint have not yet been served upon John Willson, incorrectly identified in Plaintiff's Complaint as John Wilson.

3. Copies of the Summons and Complaint and discovery which constitute the entirety of the papers filed in this action to date are attached hereto;

4. This action is a civil action in which this Court has jurisdiction, pursuant to 28 U.S.C. §§ 1332 and 1441, in that:

a. Encompass Insurance Company, incorrectly identified in Plaintiff's Complaint as Encompass Insurance, is an Illinois corporation with its principal place of business in Northbrook, Illinois.

b. Encompass Indemnity Company is an Illinois corporation with its principal place of business located in Northbrook, Illinois.

c. Michelle Grossman is a resident of Pennsylvania.

d. John Willson, incorrectly identified in Plaintiff's Complaint as John Wilson, is a resident of the State of New York.

e. The John and Jane Doe Defendants who have been identified as unidentified claim adjustors for the subject insurance claim, an unidentified supervisor for the John or Jane Doe claims, an unidentified director and/or supervisor of all homeowners claims for West Virginia for the Encompass entities, and/or the unidentified director and/or supervisor of all West Virginia claims referred to in the special investigative unit, are alleged by Plaintiff to be unidentified entities, but Encompass asserts that none of such individuals are West Virginia residents.

f. Complete diversity of citizenship exists as between the Plaintiff and the Defendants.

g. The amount in controversy alleged in this civil action exceeds the sum of $75,000.00, exclusive of interest and costs, inasmuch as Plaintiff's Complaint seeks compensation for: Count I - Breach of Contract and Breach of the Duty of Good Faith and Fair Dealing against Encompass Indemnity and/or Encompass Insurance, which seeks, in addition to alleged contract damages, "Hayseeds" damages, other compensatory damages and punitive damages for Defendants' alleged first party bad faith; violations of the West Virginia Unfair Trade Practices Act against all Defendants (Count II); and compensatory damages including, but not limited to, lost rental income, property damage and increased attorney fees and costs as well as punitive damages due to alleged misconduct of a willful and disregard of the rights of the Plaintiff; declaratory judgment (Count III) as to Plaintiff's rights under the Encompass Homeowner's Policy #281216751; and Estoppel and Waiver (Estoppel/Waiver Count), and declaration that Defendants have waived their right to challenge the Palmers' insurable interest after the water damage claims made under the subject policy.

h. The Plaintiff has claimed damages for repair to Encompass Indemnity Company in the amount of $11,000.

i. Plaintiff seeks recovery of attorney fees from Encompass Indemnity Company. Where the Plaintiff's asserted contract claim is less than $20,000.00, the attorney fees may exceed one-third of the contract claim. Hayseeds, Inc. v. State Farm Fire & Casualty, 352 S.E.2d. 73 (W.Va. 1986).

j. Plaintiff seeks recovery of other Hayseed damages, which include damages for annoyance and inconvenience and net economic loss.

k. Plaintiff seeks recovery of punitive damages, which must bear a reasonable relationship to any award of compensatory damages. However, there exists no mathematical bright hue between the constitutionally acceptable and the constitutionally unacceptable level of such damages. BMW of North America, Inc. v. Gore, 517 U.S. 559, 116 S. Ct. 1589.

l. This action, therefore, is properly removable by Defendants pursuant to 28 U.S.C. § 1441.

5. Defendants have filed a copy of this Notice with the Circuit Clerk of Jefferson County, West Virginia.

WHEREFORE, Defendants respectfully request that this case proceed before this Court as an action properly removed from the Circuit Court of Jefferson County, West Virginia.

ENCOMPASS INDEMNITY COMPANY AND ENCOMPASS INSURANCE COMPANY (INCORRECTLY NAMED AS "ENCOMPASS INSURANCE" BY PLAINTIFF'S COMPLAINT,

By Counsel

/s/ *Tanya M. Kesner*

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Counsel for Defendants Encompass Indemnity Company on the Breach of Contract (Count I), Declaratory Judgment (Count III) and Estoppel and Waiver (Estoppel and Waiver Count)

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Defendants.

CERTIFICATE OF SERVICE

I, Tanya M. Kesner, counsel for Defendants, certify that the foregoing **NOTICE OF REMOVAL** was served this **6th day of October, 2010,** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following and by depositing a true copy thereof in the regular United States Mail, postage prepaid, addressed as follows:

Stephen G. Skinner, Esq.
Nichols & Skinner, LC
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Counsel for Plaintiff

Patricia Noland, Clerk
Jefferson County Circuit Court
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Charles Town, WV 25414

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Counsel for Defendants on Plaintiff's Extra Contractual Claims

/s/ *Tanya M. Kesner*
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